

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

RYAN PETERSON

Plaintiff,

vs.

CHARLES PALMER, JASON SMITH,
MATT ROYSTER, BRAD WITTROCK,
ERVIN WHITEHEAD, SEAN
MORRIS, MICHAEL LOESCHER,
DAN PINGLE, TAL STEIG, AND
ZACH FROHLING.

Defendants.

No. 12-CV-4071-DEO

ORDER

I. INTRODUCTION AND BACKGROUND

Plaintiff Peterson is a civilly committed patient at Iowa's Civil Commitment Unit for Sexual Offenders ("CCUSO") in Cherokee, Iowa. On July 23, 2012, Mr. Peterson filed a pro se Application to Proceed In Forma Pauperis, pursuant to 28 U.S.C. § 1915(a)(1), and a 42 U.S.C. § 1983 complaint against defendants alleging that CCUSO's mail policies violate the First, Eighth, and Fourteenth Amendments of the United States Constitution. Mr. Peterson states in his Application to Proceed In Forma Pauperis that he receives \$96.00 a month in income. On this same date, United States Magistrate Judge Leonard T. Strand granted Mr. Peterson's pro se Application to Proceed In Forma Pauperis and directed the

clerk of court to file Mr. Peterson's complaint. Judge Strand did not conduct an initial review of the complaint or direct the clerk of court to effectuate service of the complaint. On August 17, 2012, Judge Strand directed that, before Mr. Peterson would be permitted to proceed, he was required to pay a partial filing fee of \$19.20 no later than August 31, 2012. Judge Strand also directed that, if Mr. Peterson paid the partial filing fee, CCUSO was to collect and remit to the clerk of court 20 percent of Mr. Peterson's preceding monthly income until the \$350.00 filing fee was paid.

On August 22, 2012, Mr. Peterson appealed Judge Strand's order. On August 22, 2012, Mr. Peterson filed an appeal to District Court Judge Mark W. Bennett. On August 24, 2012, Judge Bennett affirmed the Magistrate's Ruling. No further action was taken by the Court system, even though Mr. Peterson did not pay the fee as required by the aforementioned Orders.

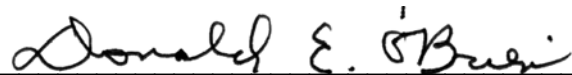
On September 24, 2012, Mr. Peterson sent a letter to this Court asking why his Complaint had been dismissed when other similar Complaints are allowed to proceed in forma pauperis. The Court styled this letter as a Motion under Rule of Civil

Procedure 60(b). On October 30, 2012, Mr. Peterson's case was transferred to this Court. On November 9, 2012, Mr. Peterson filed a Motion to Appoint Council.

II. ANALYSIS

After a review of the file, it seems clear that Mr. Peterson's Complaint must be Dismissed pursuant to Judge Strand's Order, as affirmed by Judge Bennett.¹ However, this Court normally allows CCUSO patients to proceed in forma pauperis without the prepaying of any filing fee. Accordingly, Mr. Peterson's Complaint is dismissed without prejudice and he is free to refile it.

IT IS SO ORDERED this 28th day of January, 2013.



Donald E. O'Brien, Senior Judge
United States District Court
Northern District of Iowa

¹To the extent that Mr. Peterson's letter dated September 24, 2012, is a Motion to Reconsider or Vacate under Rule 60(b) it is **denied**.